IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2002

CORAM

THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Crl.O.P.No.3000 of 1994 and Crl.O.P.No. 7394 of 1994
and
Crl.M.P.Nos.2704 and 5435 of 1994

Crl.O.P.No. 3000 of 1994:

T.V.Krishnamachari .. Petitioner.

Versus

G.Panneerselvam .. Respondent.

Crl.O.P.No.7394 of 1994:

R.S.Natarajan
Former Special Officer
TUCS Limited,
Madras. .. Petitioner.

Versus

G.Paneerselvam .. Respondent.

For Petitioners: Mr.K.Ashokan SC former
Mr.R. Balasubramanian

For Respondents: Mr.S.Paneerselvam
(Respondent Party in person)

:O R D E R

Crl.O.P.No. 3000 of 1994 is a petition filed by one T.V.
Krishnamachari, who is an advocate, to quash the proceedings in C.C.No.522 of

199 4 on the file of the VII Metropolitan Magistrate, Madras.

2. Crl.O.P.No.7394 of 1994 is a petition filed by one R.S. Natarajan, Former Special Officer, TUCS Ltd., Big Street, Triplicane, Madras, to quash the proceedings in the C.C.No.522 of 1994, on the file of the VII Metropolitan Magistrate, Madras.

3. Since the facts and the issues raised in both the petitions are identical, I deem it fit to pass a common order. The said proceedings is a prosecution by Thiru.G.Paneerselvam, who is also an Advocate, against the petitioners herein for offences under Section 500 and 501 read with 34 and 109 IPC.

4. The short facts leading to the filing of the complaint is as follows:

a) There was a civil suit in O.S.No.429 of 1981 before the XI Assistant City Civil Judge against the complainant's wife namely Shanmugavadivu. A decree for eviction has been passed in the above suit and accordingly when the bailiff had been to the petition mentioned property, the daughter-in-law of the complainant by name Kavitha had obstructed to the same, by producing a letter to the effect that she is the occupant of the said premises.

b) Therefore the first accused therein in his capacity as a Special Officer of TUCS Limited, Madras had filed two applications in E.A. No.1476 of 1988 and E.A.No.1477 of 1998 in E.P.No.1006 of 1988 through his counsel namely T.V.Krishnamachari (second accused in C.C.No.522 of 1994), praying for police aid and break opening the lock of the premises, respectively. In support of the above said petitions, a common affidavit is said to have been filed by the first accused therein and the second accused had put his signature by way of approval of the contents of the above said common affidavit in his capacity as the counsel of the TUCS, before the Court of X Assistant City Civil Judge, Madras, wherein at Paragraph-3, he has stated as follows:

I submit that to my surprise the outer door of the E.P mentioned property was locked up by the respondent/Judgement Debtor in order to prevent me from taking possession of the E.P mentioned property. I submit that the respondents husband Mr.Panneerselvam prevented the Court Amin and pushed him out and locked the outer door gate from executing the delivery warrant and resorted to violence with the help of the local persons who are very near to the E.P mentioned property. The respondents daughter-in-law Kavitha prevented the court Amin from Executing the delivery warrant. I submit that unless and until the break open door is granted to open the outer door lock of the premises and police aid is not rendered to the Court Amin and myself and delivery warrant could not be executed.

c) The averments mentioned above is the defamatory matter according to the complainant. The complainant further states that the statements are false to the knowledge of the accused and a per se defamatory and moreover the first accused admittedly was not an eye-witness to the incident and consequently has sworn to a false affidavit. Hence he has filed the present complaint for an offence under Section 500 IPC.

5. At the outset, it may not be out of place for me to state that the

complainant had filed an application in E.a.No.2273 of 1992 in E.A.No.1476 and 1477 of 1988, before the X City Civil Court for offences under Section 193 IPC and 195(1)(b)(1) and 195(1)(b)(3) read with 340 Cr.P.C to initiate proceedings against the accused, since false affidavit has been sworn before the Court below. However, after an elaborate enquiry the learned City Civil Judge dismissed the application by his order dated 24.02.93. Though this may not be very relevant for the purpose of deciding this case, it has been enunciated only for the purpose of completing the narration.

6. As far as Crl.O.P.No.3000 of 1994 is concerned, this is a petition filed by one T.V.Krishnamachari, the counsel who attested the affidavit, wherein the alleged defamatory statement is found. The only averments in the complaint as far as this petitioner is concerned that in furtherance of their common intention of defaming and causing injuries to the complainant herein and with the illegal intention of somehow or other illegally evicting the tenant, filed a false affidavit in Court and hence is said to have committed an offence punishable under Section 500 read with 34 and 109 IPC. In other words, the only allegation against him is that he attested the affidavit and that when such an application has been filed, he ought to have perused the records in the EP namely the bailiff report, the letter of obstructor and consequently, he was also a party who deliberated the preparation of the affidavit.

7. However, on going through the entire complaint and the records, I see that there is no intention of the counsel of having gone through the records and he has been instrumental to prepare this affidavit. It is not alleged that it was prepared by him and that A-1 was a mere signatory, but it was the converse of it. The role played by the counsel in attesting the affidavit is only to the effect of identifying the signature of the deponent beforehand. As far as the contents are concerned the counsel cannot be saddled with any responsibility, much so criminal responsibility.

8. In support of the above, the learned counsel for the respondent has relied upon a decision of the Special Bench of Patna High Court reported in In re Sashi Bushan Dutta (AIR 1963 Patna 353), wherein their lordships have stated that the law in regard to the allegations in a petition for transfer is that the responsibility for the allegations does not lie exclusively upon the litigant. It is the moral and professional duty of the lawyer engaged to be reasonably and generally satisfied about the fact that there may be some foundation for the allegation before he agrees to put it down on paper and sign it and file in Court. It is a kind of dual responsibility although the manner in which it is to be discharged operates differently so far as the litigant and the lawyer engaged by him are concerned. It is, therefore for a lawyer to remain alert as to what statement he is making and very much more so when the statement relates to allegations that would justify a person for transfer.

9. The case cited supra relates to the aspersions that has been caused upon the integrity of the Presiding Officer and in addition to that the litigant has made the statement that he never instructed his counsel to do so and therefore, the counsel was called upon. At any rate, the case is not one

under defamation. Whereas the case on hand is totally different where the first accused has come forward with the specific case that on instructions the counsel had written the same and consequently he cannot be saddled with criminal liability.

10. In addition to this, the learned counsel relied upon a decision of the Patna High Court reported in Saukhi Gope and others V Uchit Rai AIR 1948 Patna 56, wherein the counsel during cross examination had put certain questions which were per se defamatory on behalf of his client. However, the client would disown for having given any such instructions to put such questions and hence the High Court felt that the counsel should necessarily face trial.

11. In my opinion, this decision also does not apply to the facts and circumstances of this case, since it is the specific case of the prosecution itself, that it was A-1 who has sworn the affidavit and on the very fact that he is also been made an accused would clinchingly show that he is the author of the affidavit and according to the complainant the Advocate namely A-2, has been instrumental for the drafting and that he should have been more diligent in drafting such an affidavit and should have perused all the records that would have been available before the Court to satisfy whether the averments in the affidavit were correct or not and consequently, the Advocate (A-2) is also liable to be prosecuted. I am afraid that I am not prepared to accept this argument.

11. It is not as if the first accused is an illiterate, he is a Special Officer of TUCS and consequently, he knows the consequences of filing such affidavits and when he has sworn to such an affidavit one cannot saddle the Advocate with criminal liability who has been responsible only in attesting the affidavit. Therefore, I have no hesitation to hold that the Advocate namely the counsel for the first accused is not liable to be prosecuted under Section 500 read with 34 and 109 IPC, in the facts and circumstances of the case.

12. Let us now revert back to the averments made by the Special Officer namely A-1 in his affidavit, which runs as follows:
I submit that to my surprise the outer door of the E.P. Mentioned property was locked by the respondent/judgment Debtor in order to prevent me from taking possession of the E.P mentioned property.
"I submit that the Respondent's husband Mr.Panneerselvam prevented the Court Amin and pushed him out and locked the outer door gate from executing delivery warrant and resorted to violence with the help of the local persons who are very near the E.P mentioned property.
"The Respondent daughter-in-law Kavitha prevented the Court Amin from executing the delivery warrant."
This according to the complainant is a false statement and is also defamatory. According to him, he was never present when the Court Amin had come there and he had at no time prevented the Court Amin and pushed him out and locked the outer gate from executing the delivery warrant and he had resorted to violence with the help of local persons who are very near the EP mentioned property. According to the complainant, this runs contra to the report of the bailiff.

13. On going through the complaint, I find that there is considerable force in the argument of the complainant that these averments amounts to defamatory. As in the words of the complainant he being a reputed member of the bar would not have stood so low as to prevent the Court officer from doing his duties and seek the help of the local persons and resort to violence. I have no hesitation to hold that this matter is absolutely per se defamatory and if according to the petitioner the averments are true, it is open to him to establish the same only during the course of the trial.

14. In addition to the above said points raised by the petitioners, one other common factor which has been taken in both the petition is the question of limitation. The offence under Section 500 IPC is punishable with two years or with fine or with both. According to Section 468 Cr.P.C of the Criminal Procedure Code, the period of limitation is three years for such cases. The incident is said to have taken place in the year 1988 and the affidavit containing the defamatory matter has been filed in April 1988, while the complaint has been filed in the year 1994. However, the complainant would state that he had come to know about the contents of the affidavit only on 30.1.91 when he had applied for certified copies of the documents and consequently the present complaint is within the period of limitation specified under the enactment.

15. On the other hand the learned counsel for the petitioners would contend that just because the complainant says in the complaint that he came to know of the averments only on 30.1.91 after getting the certified copies of the documents, he cannot take it as a proper date and further it need not be taken for granted as truth. If there be an admitted document, in which it has been established that the complainant had come to know about the averments on earlier occasion, the period of limitation starts from that period. Normally this Court sitting under Section 482 Cr.P.C would not go into other document which is the subject matter of dispute to decide the point of limitation. However, the complainant admits on 03-07-2002 that he was the counsel for the complainant's wife namely Shanmugavadivu and he has signed the petition and appeared for her in E.A.No.3345 of 1999, wherein at paragraph-3 it has been clearly averred that the petitioner's counsel on perusal of the records of the above E.P after the filing of E.A.No.15 32 of 1988 found that there is an obstructor etc., and from the above it is clearly established that the complainant has knowledge about the incident as early as on 21st August 1989. In fact on going through the copies supplied by the respondent in E.A.No.3345 of 1989, it is found that the complainant has signed as the counsel for the petitioner. When the incident has come to his knowledge as early as in the year 1989 and the prosecution has been launched in the year 1994, I am of the opinion that the prosecution is clearly barred by limitation in view of the bar laid down by Section 468 Cr.P.C, which states that the period of limitation is only three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Consequently, I have no hesitation to quash the proceedings in relation to both the accused in C.C.No.522 of 1994 on the file of the VII Metropolitan Magistrate, Madras.

In the result, the petitions are allowed. Consequently, connected Crl.M.Ps are closed.

15-07-2002

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Index:Yes.
Internet:Yes.

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A. PACKIARAJ, J.

To
1.The VII Metropolitan Magistrate,
George Town, Chennai.

2.-Do- The Chief Metropolitan Magistrate,
Egmore, Chennai.

Crl.O.P. No.3000 of 1994
and
Crl.O.P.No.7394 of 1994